

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

COMCAST OF WASHINGTON IV, INC.

Employer

and

Case 19-RC-15346

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS LOCAL 89, AFL-
CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.¹ Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, I make the following findings and conclusions.²

I. SUMMARY

Comcast of Washington IV, Inc. ("the Employer"), is a video, internet, and telephone service provider. The Petitioner, International Brotherhood of Electrical Workers Local 89, AFL-CIO ("Petitioner"), seeks to¹ represent a bargaining unit ("Unit") of approximately 99 Customer Communication Technicians working out of a facility in Seattle, Washington. The Employer opposes the petition, asserting that the only appropriate unit must include the following: 16 Network Communication Technicians; 1 employee in a Representative 3, Field Operations position; 1 employee in a Technical Support 4 position; and 5 Warehouse employees.

I have carefully reviewed and considered the record evidence and the arguments of the parties, both at hearing and in post-hearing briefs. Based on the following facts and analysis, I find, consistent with the Petitioner, the petitioned-for Unit is an appropriate unit, and I have directed an election accordingly.

¹ The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization involved claims to represent certain employees of the Employer and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

² The Employer and the Union timely filed briefs, which were duly considered.

Below, I have summarized the record evidence detailing the Employer's operations and the employee classifications at issue. Following my summary of the relevant record evidence is my analysis of the applicable legal standard, specifically the Board's community of interest standard, and its application to the record in this case. In conclusion, I have addressed the details of the directed election and the procedures for requesting review of this decision.

II. RECORD EVIDENCE³

A. The Employer's Operations

The Employer operates a telecommunications network that provides video, internet, and voice services for residential and commercial customers in the greater Seattle, Washington area. Part of the Employer's business is technical in nature consisting of operating and maintaining the physical network that carries the signal, and physically connecting customers to the network, either through new installations or service that maintains the connection. The technicians that perform these tasks are based at the Seattle Technical Operations Center located on Stone Way Avenue North in Seattle, Washington (the "Employer's facility"). The Employer's facility contains a warehouse, a garage, administrative offices, and a retail store open to the public.⁴

The Employer's network is a complex physical system for the delivery of a digital signal. In the Employer's Seattle operation, the beginning of the network is the "head end," the Employer's satellite uplink. Fiber optic cable connects the head end to nodes, located in a number of locations throughout the Employer's service area. The nodes are connected to the "hard line," coaxial cable contained in a heavy, shielded tube, which runs throughout the service area underground or on utility poles. Once in the hard line, the signal requires amplification, and at various points in the hard line there are intermittent amplifiers. The nodes and amplifiers also contain converters, to power the network from standard utility electrical power, and batteries to power the network in case of a power failure. The hard line ends at a "tap," the point where a "drop" or "soft drop" will carry the signal along flexible wire to the customer's residence, through a home amplifier, and ultimately to the customer's device, the modem, router, or converter.⁵

Jeff Votaw is the Director of Technical Operations, the most senior manager at the Employer's facility. Reporting to Votaw is Installation and Service Manager Todd Clark, who supervises the Installation and Repair department, which consists of the 99 Customer Communication Technicians ("Customer Technicians") that constitute the petitioned-for unit.

³ The Employer called Director of Technical Operations Votaw, Network Maintenance Manager Vavrousek, Network Maintenance Supervisor Thomas, and Regional Human Resource Director Michelle Davis as witnesses. Petitioner called Customer Technicians Kenneth Shelton, Kim Lucke, and Tyler Christianson as witnesses. No employees in the other classifications at issue: Network Communication Technicians; Representative 3, Field Operations; Technical Support 4; or Warehouse employees, were called as witnesses.

⁴ The parties would exclude the other classifications that work at the facility, including 12 dispatchers, 6 customer sales and service representatives, 19 sales representatives, and 2 office clericals, as well as managers and supervisors for both the technical and non-technical classifications. In light of the above and the record as a whole, I shall exclude these classifications from the unit found appropriate herein.

⁵ The Employer's network, and employees' work with it, are described in this decision in terms of a residential customer in a single family home. While I recognize the Employer also provides service to apartment buildings, condominium complexes, and commercial customers, the term home is used for descriptive ease.

The department is divided into seven teams of 12 or 13 Customer Technicians, each reporting to a front-line supervisor who in turn reports to Clark. Also reporting to Votaw is Network Maintenance Manager John Vavrousek, who, in turn, supervises Network Maintenance Supervisor Butch Thomas. Thomas is the front-line supervisor of the 16 Network Communication Technicians ("Network Technicians"); the Representative 3, Field Operations position ("Rep 3"); and the Technical Support 4 ("Tech Support 4") position.⁶ The Employer's five Warehouse employees fall under a separate supervisory hierarchy, reporting to Lori Fabian, the Warehouse Supervisor, who reports to Warehouse Manager James Ogden, who in turn reports to Finance Director John Snow.⁷

All employees at the Employer's facility are subject to the same employment policies and share some benefits. The Employer's medical, dental, vision, disability, 401(k), discount and vacation benefits apply equally to all the classifications at issue as well as to the other employees employed at the Employer's facility. The entire employee compliment is also eligible for a bonus pegged to the Employer's overall performance.

In 2002, the Employer acquired the facility from AT&T Broadband, which had owned and operated the facility since its acquisition from TCI Cablevision in 1999. Prior to decertification in 1999, the technicians at the Employer's facility were included in a multi-facility bargaining unit represented by the Communication Workers of America.⁸

B. Classifications at Issue

1. Customer Communication Technicians

Customer Technicians perform the Employer's installation and repair work in the field between the tap and the customer's device. They generally work alone, travelling from work location to work location while receiving dispatches from the Employer's computerized dispatch system. The type of job assigned to a given Customer Technician is based on that Technician's level, which reflects their knowledge and proficiency.

Customer Technicians are classified at levels between 1 and 4. Customer Technician 1 is the Employer's entry level technical position. In this position, employees are instructed to perform the basics of installation, connecting a customer to the Employer's network, and trained to use the Employer's basic equipment, such as meters to measure signal strength, digital converter boxes, and modems. The Customer Technician 2 position involves the basics of service and repair to customer connections, and the installation of additional equipment such as wireless routers. Customer Technicians 3s have a greater level of proficiency, and are able to perform installation, service, and repair for commercial customers. Customer Technicians 3s are also able to perform service and repair on more advanced video equipment, such as home theater systems, and more advanced internet equipment. Finally,

⁶ "Technicians" as used in this decision refers to the Customer Technicians and Network Technicians as a group, but does not include the Rep 3, Tech Support 4, or Warehouse employee positions. The Rep 3 position is referred to in the record by a variety of designations. I have referred to the position in the first instance by the title as it appears in the Employer's job description.

⁷ Ogden and Snow are not located at the Seattle facility, but have offices in the Employer's Puyallup, Washington facility.

⁸ The bargaining unit included 177 employees at TCI's three facilities, two in Seattle and one in Auburn, Washington. The bargaining unit included classifications, with different titles, that installed and maintained TCI Cablevision's cable television system, and specifically excluded Warehouse employees.

Customer Technician 4s have the most advanced installation, service, and repair skills for residential and commercial customers.

Customer Technicians advance to higher levels by self-study and testing. When a Customer Technician has met the time-in-grade requirements of his current level, and met certain performance requirements, they may seek to advance; a position opening or other action by the Employer is not required. The precursor performance requirements are acceptable scores on the following: install to service call ratio, how many of the employee's installations required a service call within 30 days; repeats, how many of the employee's service calls required another service call within 30 days; safety, whether the employee had any written violations in the last 30 days; and quality control, the value assigned to an employee's work when a supervisor or quality control technician inspects it in the field.⁹ If the Customer Technician has met these requirements, the employee may take an online advancement test, and if that test is passed, a practical test in the field will be proctored by a trainer or experienced employee. If all the requirements are met, the employee then advances to the next level and receives the commensurate pay increase.¹⁰

This advancement process potentially changes when a Customer Technician is prepared to matriculate from the level 3 position, however. At that point, the employee has a choice, he may either remain on the "customer facing" side of the Employer's operation, advancing to a Customer Technician 4 position, or he may seek to crossover to the network side of the Employer's operation and become a Network Communication Technician 4.¹¹ Unlike advancement within Customer Technician levels, the Employer must post an opening for an employee to advance to a Network Communication Technician position; a Customer Technician cannot self-promote into this position.¹² The Employer adds an interview to the advancement process at level 3 and 4 for those Customer Technicians who seek to work with commercial customers, and an interview is also part of the Network Technician selection process.

Regardless of level, Customer Technician work is almost entirely in the field, and their

⁹ These requirements are the same factors that are considered in Customer Technicians' yearly evaluations, in addition to other factors such as punctuality, care of equipment, and a variety of customer service factors.

¹⁰ Between December 14, 2008, and October 7, 2010, of the approximately 99 Customer Technicians, 25 matriculated at least one grade.

¹¹ Between December 14, 2008, and October 7, 2010, 5 Customer Technician 3s reached the customer facing/network split and elected to become a Customer Technician 4. During this same period, two Customer Technicians reached the customer facing/network split and, following posting of open Network Technician positions, became Network Technician 4s. These were the only Network Technician postings during that period, and 18 Customer Technicians applied for the two open positions. There is no evidence of any Network Technician leaving their position to become a Customer Technician.

¹² There is significant dispute in the record regarding the transition to the Network Communication Technician 4. It is not in dispute that the Employer must post a position for an employee to advance into this position, and that an interview will take place in the selection process. Director of Technical Operations Votaw testified that a Customer Technician 3 may take the online and practical tests, obtain the pay increase of a level 4 and begin work on the network through self-promotion. However, he must simply wait for a Network Technician position to open to gain the title (and presumably perform network work exclusively). Customer Technician 3 Tyler Christianson testified, however, that while he recently was allowed to take the online test and interview, he was not allowed to take the practical test, and was not eligible for the level 4 wage increase, until he was selected for a Network Technician 4 position. On brief, the Employer appears to concede Christianson's facts in making its arguments. Given the uncontroverted testimony that 18 Customer Technicians applied for the two Network Technician 4 positions that were posted in the last 22 months, and the lack of any other support in the record, it does not appear plausible that the transition from Customer Technician 3 to Network Technician occurs in the manner described by Votaw.

work involves significant customer contact. As noted, Customer Technicians are responsible for the connection between the tap, through the drop, and to the customer's device within the home. As a result, whether performing an installation or repair, the Customer Technicians will be in contact with the customer, will likely be performing work in or about the residence, and will be using the skills and knowledge that relate to their portion of the network, from the tap to the customer's device.

Customer Technicians will, on occasion, be assigned to perform a signal leakage ride-out, a task that does not necessarily involve customer contact. This assignment involves the Customer Technician driving to a specific area and then using open air sensing equipment to identify the source of a signal leakage.¹³ The signal leakage can occur at any point in the network. Customer Technician Lucke testified that once located, if he is capable of repairing the source of the leakage, he will do so, such as a loose fitting or wire in the soft drop chewed by a squirrel. His repairs are limited to the area between the tap and the customer's device, which is the portion of the network serviced by Customer Technicians.¹⁴

There is conflict in the record regarding whether a Customer Technician can or would perform any work in the network beyond the tap. Votaw testified a Customer Technician will perform work to the "first active," the first amplifier on the hard line. Customer Technician 3 Kenneth Shelton, a 15 year employee, however, testified he would not work beyond the tap. When questioned why that was the case, he stated "I do not have the equipment, nor the parts, nor the tools...nor the training." Similarly, Lucke, an 11-year employee, testified he does not work beyond the tap because he has neither the training nor the tools.¹⁵

In performing their work, Customer Technicians use ladders, hand tools such as screwdrivers, pliers and cable cutters, meters for home wiring and amplifiers, and in-home devices, including digital converter boxes, routers, and modems. Customer Technicians are not required to hold any outside certifications or licensing, although the position requires familiarity with electrical code. Customer Technicians attend weekly meetings that are also attended by Network Technicians, the other classification of Technician employed by the Employer and described in the following section.¹⁶ Customer Technicians wear gloves and a

¹³ It is not disputed that signal leakage equipment is standard for Customer Technicians and Network Technicians. Votaw testified that the equipment is always turned on and, if an outage above a certain level is detected, Technicians repair or report the leakage. Customer Technician 4 Kim Lucke testified this is not the reality of his daily work, that when dispatched to an install or service and repair job it is not practical to leave the leakage detection equipment on and repair or report any signal leakage, he testified he will identify and address signal leakage almost exclusively when assigned a specific signal leakage ride-out.

¹⁴ Signal leakage ride-outs do not necessarily result in customer contact in the manner of an installation. For example, the squirrel chew on the soft drop could be repaired on a utility pole and would not require customer contact. However, if the source of the leakage is at or inside the customer's home, customer contact would result in the same manner as other Customer Technician dispatches.

¹⁵ The Customer Technician 4 job description states the position will troubleshoot to the first active, consistent with Votaw's testimony. The record also indicates the test for Customer Technician 3 and 4 advancement contains some elements related to work between the tap and the head end. When questioned regarding this portion of the job description, however, Lucke stated it is not correct, it does not reflect the realities of the work in the field.

¹⁶ The evidence is in conflict whether Technicians attend one or two meetings a week. The Technician meetings address safety and new products. All employees attend a quarterly meeting addressing non-technical issues affecting the entire workforce.

hard hat, as well as a uniform.¹⁷ All Customer Technicians have an Employer-issued laptop and vehicle, typically a van.¹⁸

Customer Technicians work four, 10-hour shifts per week, either Sunday through Wednesday or Wednesday through Sunday, 7:30 a.m. to 6:00 p.m. In addition to regularly scheduled hours, Customer Technician 4s also have on-call or standby responsibilities. The Employer maintains a standby schedule to provide 24-hour coverage in case of emergency outages. Customer Technician 4s are scheduled for standby on a rotating basis, with two scheduled at any given time. Standby is scheduled 1 week at a time, and at hearing it was estimated for Customer Technician 4s, the standby obligation was 3 or 4 weeks a year. The Technicians' front line supervisors rotate acting as supervisor on standby. The record does not quantify how regularly or frequently employees are actually called in to perform work while on standby status.

Each level has its own hourly wage range. For example, Customer Technician 2s have a minimum hourly wage of \$14.75 an hour and a maximum of \$21.15 an hour, and Customer Technician 3s have a minimum hourly wage of \$17.00 an hour and a maximum of \$25.14 an hour. Employees are evaluated on a yearly basis and will progress within the wage range for their level with each successful evaluation.

2. Network Communication Technicians

The Employer's 16 Network Technicians maintain the network between the tap and the head end, servicing the fiber optics, shielded cable, nodes, and amplifiers that make up the hard line. This includes routine maintenance and tasks, such as minimizing signal leakage and responding to outages. Network Technicians are classified as level 4 or 5. As noted in the previous section, Network Technicians progress from a Customer Technician 3 position. There are no entry-level Network Technician positions. Both levels of Network Technician service and repair the hard line, but Network Technician 5s have additional training regarding the fiber optic elements of the network.

A Network Technician did not testify at the hearing, but Votaw, Vavrousek, and Thomas testified regarding work performed by the Network Technicians.¹⁹ Like Customer Technicians, Network Technicians work almost entirely in the field, but unlike Customer Technicians, Network Technicians rarely work in a customer's home, or have interactions with customers.²⁰

¹⁷ All employee classifications at issue in the instant case wear the same Employer-provided uniform and receive the same \$250 yearly allowance for boots and jeans.

¹⁸ Customer Technician 2s and above are allowed to take the company vehicle home at night, travelling directly home from their last job. If the Customer Technician lives within the Employer's service area, they may be dispatched from home, travelling directly from home to their first job without travelling to the Employer's facility. This is referred to as "home dispatching." In the regular course, these employees will only visit the Employer's facility once a week to exchange equipment. Customer Technicians who live outside the service area may take the vehicle home each evening, but they must report to the Employer's facility at the start of each shift. This is referred to as "home garage."

¹⁹ The record contains extensive information on the various competencies that are required as employees progress up the technical career ladder. Some of these are generally non-technical, for example safety and knowledge of the Employer's policies, and some are technical, such as use of specific equipment. As all Customer Technicians and Network Technicians progress up the career ladder prior to the customer facing/network split at level 4, all Technicians share much of the same basic knowledge and skills.

²⁰ Both Shelton and Lucke recalled a single day when, following a widespread technical issue, extreme demand required Network Technicians and capable management to perform Customer Technician service

While there is conflict in the record regarding the work demarcation in the network between Customer Technicians and Network Technicians, it is clear that in the regular course of their employment, Network Technicians do not contact customers or work between the tap and the customer's device.²¹

The Employer's surveillance center, which monitors the network, dispatches Network Technicians to outages utilizing the same computerized dispatch system used by the Customer Technicians.²² Customer Technicians that discover a network problem have the option of contacting a Network Technician, or submitting a maintenance request, which is then processed as a dispatch for the Network Technicians without interaction between the classifications.

The record contains some evidence regarding how often contact between the two classifications of Technicians takes place. Director of Technical Operations Votaw testified that contact between Customer and Network Technicians was "not uncommon," occurred "all the time" and was the "regular course of business" for the Technicians.²³ Customer Technician 3 Shelton testified that he does speak to Network Technicians on the phone occasionally in performing his work, but that it is more likely, if he identifies a problem in the network, he will submit a maintenance request via his computer. Although the specifics of the process are not contained in the record, the maintenance request is then processed and prioritized and will result in the Network Technicians being dispatched. Lucke likewise testified that when a problem in the network is identified, he is likely to submit a maintenance request.²⁴ Both Customer Technicians referenced the need to keep moving on their own schedule and the desire to create a record as reasons to prefer submitting a maintenance request via computer rather than directly contacting a Network Technician. Lucke, who, as a Customer Technician 4 is scheduled for overnight standby, added that in the case of overnight standby, he is more comfortable having the supervisor for the standby shift determine whether the Network Technician should be contacted in the middle of the night. Thus, Lucke is unlikely to make a direct call to a Network Technician in such instances.

In performing their work, Network Technicians use hand tools, ladders, lift equipment and other specialized tools related to the shielded cable, amplifiers, and nodes they work with. They wear gloves and a hard hat, as well as the Employer's uniform. As noted in the previous section, Network Technicians attend a weekly meeting with the Customer Technicians. Network Technicians have an Employer-issued laptop and vehicle, typically a bucket truck, or some other truck with lift capability.

Network Technicians generally work four, 10-hour shifts per week. Some work either a

calls. Vavrousek described, generally, several instances where a Network Technician's work may take them into a customer's home, but the regularity and/or frequency of such work was not detailed in the record by the Employer beyond mere assertion that it occurred.

²¹ On direct, Shelton testified he observed Network Technicians working between the tap and the house once a month, but on cross-examination and redirect he testified this was not the case.

²² Network Technicians receive only a part of their work assignments from the dispatch system. The record does not indicate why this is, or how the remainder of their work is assigned.

²³ However, the Employer did not detail the regularity and/or frequency of these contacts in the record, with the exception of Thomas's testimony regarding the contact that took place the day before the hearing.

²⁴ When filling out a maintenance request, the form used by a Customer Technician provides the option of having the Network Technician who resolves the problem, directly contact the customer. However, Lucke testified it was rare for a customer to request contact with the Network Technician.

Sunday through Wednesday or Wednesday through Saturday, 7:30 a.m. to 6:00 p.m. shift, mirroring the work hours of the Customer Technicians, and some work a 5 day week, Monday through Friday 7:30 a.m. to 4:00 p.m. schedule. Additionally, some Network Technicians work a shift beginning at 3:00 a.m. which is dedicated to scheduled overnight maintenance on the network, when disruption to customers is limited.²⁵ Two Network Technicians are scheduled on standby for unscheduled overnight needs at any given time, and are scheduled on the same rotating schedule described in the previous section for Customer Technicians. As with Customer Technicians, the regularity and frequency with which standby Network Technicians are actually called into service while on standby status is not detailed in the record.

Network Technicians are compensated on the same wage grade as Customer Technicians. Network Technician 4s are paid between \$19.86 and \$29.76 per hour, the same as Customer Technician 4s. Network Technician 5s are paid between \$23.80 and \$35.67 per hour. Exact income figures are not in the record, but because no Network Technician is below a level 4 on the wage grade, and the Network Technician's may obtain a level 5 rating unavailable to Customer Technicians, it is almost a certainty the Network Technicians as a group are more highly compensated than Customer Technicians.²⁶

3. Rep 3

One employee, Mel Hara, holds the Rep 3 position at the Employer's facility. This position is part of the network maintenance group, along with the Network Technicians and the Tech Support 4 position described in the following section. Hara reports to Network Maintenance Supervisor Thomas. The Rep 3 position requires skills and abilities similar to that of a Network Technician, but the Rep 3's primary duties are related to the utility poles on which the physical network is located. The Employer leases space on these poles, and coordinating with contractors regarding maintenance and replacement of the poles is the Rep 3's responsibility. Hara also has some technical duties related to multi-dwelling units, apartment buildings and condominium complexes.

Hara has a work space at the Employer's facility, but he also has an Employer-issued vehicle and performs some work in the field. As a Rep 3, Hara is compensated on a different pay scale, "Grade K," than the Technicians, although the Grade K range correlates generally to the wage range of a Customer Technician 3. Hara works a Monday to Friday, 7:30 a.m. to 4:00 p.m. shift. The record does not indicate what proportion of his time is spent in the field, and how much is spent at the Employer's facility. Hara may attend the weekly Technician meeting.

Hara did not testify at the hearing. Customer Technician Shelton testified he has never worked alongside Hara, but Shelton will occasionally call or email Hara regarding a pole issue or something similar. Shelton estimated this may happen once every 3 months. Customer Technician Lucke testified he says hello to Hara, but has limited work interactions with Hara, as Lucke could only recall having to speak to him once on the phone once during Lucke's 11 years of employment.

²⁵ How many Network Technicians are assigned to each shift is not contained in the record.

²⁶ The Employer asserts all Technicians receive the same pay when on standby, citing to Votaw's testimony. It would appear from the record Votaw stated all Technicians receive the same shift premium, but he statement is ambiguous to a degree.

4. Tech Support 4

One employee, Van Simmons, is employed in the Tech Support 4 position at the Employer's facility. This position is part of the network maintenance group in that Simmons reports to Network Maintenance Supervisor Thomas. The Tech Support 4 position is responsible for meter repair, repair of the Technicians' laptops, repair of network components (such as amplifiers, nodes, and power supplies), and some vehicle repairs.

The Tec Support 4 position is compensated on the Grade K scale, again with a range generally correlating to that of a Customer Technician 3. Simmons has a work space at the Employer's facility where he spends his work time. He does not have an Employer-issued vehicle and does not perform work in the field. Simmons works Monday to Friday, 7:30 a.m. to 4:00 p.m. The record does not indicate whether Simmons attends the weekly Technician meeting.

Simmons did not testify at the hearing, but other employees testified regarding their interaction with him. Customer Technician Shelton testified he will occasionally take a piece of equipment to Simmons for repair, estimating this occurred once a month or perhaps once every other month. Customer Technician Lucke testified he took a piece of equipment to Simmons "a couple times a year," and that this was his only interaction with Simmons.

5. Warehouse Employees

Five employees staff the warehouse at the Employer's facility. The Warehouse employees issue equipment to the Technicians, accept returning equipment, and maintain an inventory of equipment in the warehouse. Both Customer and Network Technicians make a once weekly exchange of equipment at the warehouse, to obtain fresh stock and return any defective equipment. Warehouse employees do not repair equipment and perform only basic tests, but they do forward returned malfunctioning equipment for repairs.

Warehouse employees do not have Employer-provided vehicles, and do not deliver parts to the field. The Warehouse employees work 7:00 a.m. to 3:30 p.m. Monday through Friday. They wear uniforms similar to the Technicians. Warehouse employees do not attend the weekly Technician meeting. Warehouse employees have moved to entry-level Technician positions. Between December 14, 2008, and October 7, 2010, two employees moved from the warehouse to a Customer Technician 1 position.²⁷

No Warehouse employees testified at hearing, but other employees testified regarding their interactions with the Warehouse employees. Customer Technician Shelton testified he saw the Warehouse employees every day as he came and went from the Employer's facility in the morning, but that he really only interacted with them once a week, for about 20 minutes, when he exchanged equipment. Lucke testified similarly, but added that he had, as a Technician, worked a day in the warehouse on a light duty assignment due to an injury he had suffered.

²⁷ There is no evidence of any employee leaving a Technician position to become a Warehouse employee.

III. ANALYSIS

A. Community of Interest

The Board has held that in order for a unit to be appropriate for purposes of collective-bargaining within the meaning of the Act, the unit need not be the only appropriate unit or the most appropriate unit; it need only be *an* appropriate unit. *Barron Heating and Air Conditioning, Inc.*, 343 NLRB 450, 452 (2004), citing *American Hosp. Ass'n v. NLRB*, 499 U.S. 606, 610 (1991); *Overnite Transportation Co.*, 322 NLRB 723 (1996). Thus, in determining whether a unit is appropriate, the Board first examines the petitioned-for unit, and if the petitioned-for unit is *an* appropriate unit, the inquiry ends. *Barlett Collins, Co.*, 334 NLRB 484, 484 (2001). If it is not an appropriate unit, the Board then examines whether an alternative unit suggested by the parties or another unit not suggested by the parties is appropriate. *Overnite Transportation Co.*, 331 NLRB 664, 663 (2000).

When an employer asserts a unit is not an appropriate unit because the *only* appropriate unit must contain additional employee classifications, the question is whether the petitioned-for employees possess a community of interest separate and distinct from the employees an employer seeks to include. *Casino Aztar*, 349 NLRB 603, 604 (2007).²⁸ In determining whether a group of employees possesses a separate community of interest, the Board examines such factors as: (1) functional integration; (2) frequency of contact and interchange with other employees; (3) degree of skill and common functions; (4) commonality of wages, hours, and other working conditions; (5) shared supervision, and, if applicable; (6) bargaining history. *Publix Super Markets*, 343 NLRB 1023, 1024 (2004); *Bashas', Inc.*, 337 NLRB 710 (2002); *Ore-Ida Foods*, 313 NLRB 1016 (1994), *affd.* 66 F.3d 328 (7th Cir. 1995).

While factors are present here which would support finding a unit of all the Employer's Technicians, again, the petitioned-for-unit must only be an appropriate unit, not the most appropriate unit. Here, the interests of the Customer Technicians and Network Technicians are distinct enough that I am not compelled to include them in a single unit. I have detailed my reasons for reaching this conclusion below, addressing the lack of functional integration, the minimal contact and interchange, the difference in skills and functions between these positions, and the lack of common supervision.²⁹ In addressing each factor, I have also noted the reasons I find the Rep 3, Tech Support 4, and Warehouse employees also lack a community of interest with the Customer Technicians that compels exclusion from the unit.

1. Functional Integration

The work of the Customer Technicians in and around the home, and the work of the Network Technicians on the line, is largely distinct. Technicians perform their day-to-day functions independently, and there is no evidence that any Customer Technician in the normal

²⁸ On brief the Employer cites to the Board's recent decision in *Wheeling Island Gaming, Inc.*, 355 NLRB No. 127 (August 27, 2010), for the principle that, when determining whether an appropriate unit is *an* appropriate unit, the inquiry is not only internal, examining the interests of the petitioned-for employees, but also external, examining whether the petitioned-for employees are sufficiently distinct from surrounding employees. This is a long-standing Board principle and I have applied it in the instant case.

²⁹ I note the Unit at issue herein does not involve the utility industry unit standards, and I am, therefore, not required to consider the Board's position that the optimal bargaining unit in the utility industry is system-wide. See *Alyeska Pipeline Service Co.*, 348 NLRB 808 (2006).

course of their employment requires the input or assistance of any Network Technician to complete Customer Technician work (either installation or service and repair duties).³⁰

The record reveals that occasionally a Customer Technician will determine that a problem is beyond the tap-to-house portion of the network. At that point, however, the Customer Technician turns the issue over to Network Technician. Whether this is by a telephone call, or submitting a maintenance request, the Network Technician then addresses the problem independently. The Customer Technician does not wait for the Network Technician, or assist in the Network Technician's repair. Thus, in most instances involving a network problem the Technicians do not even communicate. This type of problem resolution highlights the separate nature of the two positions; and, as Petitioner correctly points out on brief, it highlights a level of cooperation, rather than a significant level of integration.³¹

The lack of functional integration is also demonstrated by the organizational separation of the Technicians. The Customer Technicians and their supervisors are the only employees in the Installation and Repair department, and are separated from the Network Maintenance department by two levels of intermediate supervision before common supervision is reached. This is a significant organizational separation, and it supports Petitioner's position.

The Employer argues functional integration can be found because Technicians "perform many of the same job functions during the course of their work," and specifically references in-home product installations, signal leakage ride-outs, and pre-wiring. This argument, if based on the actual work of the Network Technicians, is unsupported by the record. If based on the job descriptions, it is unconvincing. Moreover, the Employer has failed to produce evidence detailing the regularity and frequency of these similar job functions. Indeed, no Network Technician testified at hearing, and to the extent the supervisors and managers of the Network Technicians made this assertion, it was simply that, an assertion unsupported by sufficient evidence. It is true that the job descriptions of Customer Technicians and Network Technicians contain some similarities, but these are largely the portions of the job descriptions that the Customer Technician witnesses stated, as it related to their positions, were inaccurate.³²

In a very broad manner, some evidence of functional integration can be found. Technicians both have a role in maintaining customer's connection to the network, or, as the Employer states on brief, "the elimination of signal problems." However, this construction is too broad to provide useful evidence of functional integration, it is merely a statement of a broad goal, not a discrete task on which the Technician's work together, and I do not find it has persuasive value. I also note, as Petitioner does, that the Employer has placed the Customer Technicians and Network Technicians in separate departments, which reinforces the conclusion that they are separate and distinct groups. The persuasive evidence here lies in the independent nature of each classification; that a Customer Technician will, in the regular course, complete his assigned task from start to finish without relying on a Network Technician in any significant fashion.

³⁰ The inverse is also true as the record reveals that Network Technicians similarly perform their daily functions independent of Customer Technicians.

³¹ See *Ore-Ida Foods, Inc.*, 313 NLRB 1016, 1019-1020 (1994).

³² The Employer's argument is addressed in this section because it is raised as evidence of functional integration, but this argument and my analysis is equally applicable to the "degree of skill and common function" element.

In regard to the Rep 3, Tech Support 4, and Warehouse employees, I find even less evidence of functional integration with their work and that of the Customer Technicians. Again, the evidence demonstrates the employees in these positions perform their duties on a regular basis largely without the involvement of each other. In light of the separate nature of each classification's work, I find the Employer's operations consist of primarily separate phases and are not functionally integrated. *See Publix Super Markets*, 343 NLRB at 1024.

In light of the above and the record as a whole, I find the lack of functional integration, as reflected in their independent duties and separate departments, supports Petitioner's position.

2. Frequency of Contact and Interchange

In regard to contact, it is paramount that Customer Technicians' work is not only performed independently, as described in the previous section, but it is generally performed in the field, alone. The nature of the work greatly limits the amount of contact Customer Technicians have with other employees, be they Network Technicians or from the other classifications at issue. While the record contains some evidence of contact between Customer Technicians and Network Technicians in the field, it is limited.

Director of Technical Operations Votaw testified that contact between Customer and Network Technicians was "not uncommon," occurred "all the time" and was the "regular course of business" for the Technicians. Network Maintenance Supervisor Thomas testified he receives several calls a day from Customer Technicians, and provided three examples from the day before the hearing where a Customer Technician and Network Technician either spoke by telephone regarding an issue or worked together on an outage. The Consumer Technicians that testified, however, stated that they rarely are in contact with a Network Technician, and 11-year employee Lucke testified he may only contact a Network Technician once or twice a month.

Here, the Employer has failed to adequately detail the regularity and frequency of contact between the Technicians. Votaw offered only general assertions and, to the extent he and Vavrousek attempted to quantify contact it was based on one or two layers of hearsay, which I am not inclined to rely upon when in conflict with the Customer Technicians' testimony. Thomas's testimony regarding contact between Technicians was not hearsay, but he only detailed the frequency of contact on a single day, the day before the hearing. Clearly, the Employer tends this to be taken as a representative sample. As such, it is inadequate. The failure of the Employer to detail the regularity and frequency is all the more problematic because the Employer clearly uses a computerized dispatch system that would seem to provide some basis for quantifying Technicians' contact.

Although deficient for the reasons mentioned, and while apparently in conflict, I do find this testimony may be reconciled to some degree. The Employer employs 99 Customer Technicians; if each call a Network Technician once a month, and the distribution was even, this would still average several calls a day. Thus, it is not unreasonable to use Votaw's phrasing to describe the contact if it occurs with this regularity and frequency. In short, the large number of Customer Technicians would explain why the contact between Technicians may on the surface appear to be both significant in total and insignificant on an individual Customer Technician basis. Even assuming a few Customer Technicians call Thomas or a Network Technician on any given day, the vast majority of Customer Technicians are going

about their daily responsibilities without any contact with the Network department. In producing some evidence of contact, the Employer has ultimately shown it is limited and not in the normal course of a Customer Technician's work, a conclusion clearly supported by the Customer Technicians' testimony.

There is evidence of contact when Technicians report to work. Although not quantified in the record, some percentage of Technicians report to the Employer's facility in the morning, when they have at least some contact with each other and the other classifications at issue. Technicians also have one or two weekly meetings. However, on balance, it appears the norm is a lack of significant regular contact in their daily duties. Again, the petitioned-for employees work alone and coming into contact with another employee is the exception, not the norm. The record reveals Customer Technicians rarely interact with Network Technicians, and depending on the circumstances of their assignments and how they report for work, Customer Technicians may go up to week; completing dozens of calls in the interim without contacting with a Network Technician.

In regard to the Rep 3, Tech Support 4, and Warehouse employees, their contact with Customer Technicians is less frequent. The testimony of the Customer Technicians is that their contact with Hara and Simmons is brief and intermittent, and long periods of time may pass without contact. In regard to the Warehouse employees, while the Customer Technicians may interact with them weekly, it is a brief exchange, and the Warehouse employees also lack the contact that results from the weekly meetings for Technicians.

A lack of contact may be balanced by evidence of interchange, temporary or permanent transfers, with the qualification that the Board has traditionally given permanent transfers less weight than temporary transfers in assessing a community of interest. *Ore-Ida Foods, Inc.*, 313 NLRB at 1021, fn. 4. Here, there is no evidence of temporary transfers, and minimal evidence of permanent transfers.

In regard to temporary transfers, the record reveals 1 day in the last decade where Network Technicians were assigned Customer Technician duties, but there is no other evidence of Network Technicians being scheduled to work Customer Technician shifts, or otherwise operate as Customer Technicians on a temporary basis. This is true even though it is clear the Network Technicians possess the skills and abilities to do so due to their advancement through those positions. Customer Technicians do not have the skills to operate as Network Technicians and, as expected, there is no evidence of Customer Technicians serving as Network Technicians in a temporary capacity.

On brief, the Employer asserts "[Network Technicians] also perform [Customer Technician] work when there are vacancies in the [Customer Technician] positions. Thus, the [Network Technicians] may divide their work week into performing [Customer Technician] duties for a number of days." As support, the Employer only cites to the testimony of Votaw as the basis for this statement, including a portion of testimony where Votaw is describing the work of a *Customer Technician 3* transitioning to a Network Technician 4 position, in the period when the Customer Technician has passed the tests, but has not yet gained the title of a Network Technician. First, his statement was that a Customer Technician would have split duties, not a Network Technician. Second, as described earlier, this aspect of Votaw's testimony was in direct conflict with the other testimony in the record, and there was no

evidence regarding the regularity or frequency of the split work described.³³ Absent support, I find this does not constitute evidence of a temporary transfer and I find the Employer's argument unpersuasive in light of the lack of record evidence.

In support of this argument the Employer cites *Monsanto Co.*, 183 NLRB 415 (1970). There, the Board clearly based its decision that separate production and maintenance units were not appropriate in large part due to the frequent contact between the production and maintenance employees, frequent work reassignments between the groups, and production employees being assigned to maintenance to avoid layoff. *Monsanto Co.* 183 NLRB at 416. Here, however, contact and interchange evidence of this nature is absent. Thus, the comparison to *Monsanto Co.* is inapposite.

In regard to permanent transfers, in a period just short of 2 years detailed in the record, only two percent of Customer Technicians have moved to Network Technician positions, and no Network Technician has moved to a Customer Technician position. Indeed, in light of the Technicians' career ladder it is unlikely movement in the direction of Customer Technicians would ever occur. Accordingly, the record reflects a negligible amount of movement between the Technician positions, and then in only one direction.

I find the numbers in the present case is significantly different from the permanent transfers in *Harrah's Illinois Corp.*, 319 NLRB 749 (1995), a comparison drawn by the Employer on brief. That case involved a petitioned-for unit of maintenance employees that shared a department with cleaner and "heavy duty" cleaner classifications. In that case, in a 2 year period, seven cleaning employees had progressed from cleaner to heavy duty cleaner positions, of which the Employer employed approximately 15. During the same time period, four heavy duty cleaners became maintenance employees, of which the Employer employed 16. *Harrah's* at 750. *Harrah's* also involved movement in both directions, as one part-time maintenance employee became a full-time heavy duty cleaner. Although the period of time and employee compliment are roughly equivalent to the instant case, in *Harrah's* the number of employees, 11, moving between positions was greater by a factor of five.

I do note that long term interchange is the best evidence in regard to the Warehouse employees sharing a community of interest with the Customer Technicians. In the previous 22 months, one-third of the regular compliment of Warehouse employees, two of six, have moved to a Customer Technician position. However, this movement is again in only one direction, absent the very minimal exception found in the one day Lucke temporarily worked in the warehouse on a light duty assignment.

On balance, I find the factor of contact and interchange between the Technicians supports Petitioner's position.

3. Degree of Skill and Common Functions

The Customer Technicians and Network Technicians work on different portions of the Employer's network. Although some dispute exists as to the exact demarcation, it is clear that, in the normal course of their daily tasks, Customer Technicians are working with the portion of the network that extends from the tap to the customer's device, and the Network Technicians

³³ An alternative reading of this portion of Votaw's testimony is that he was referring to a "push," a time of heavy demand on the Customer Technician side. To the extent he is describing Network Technician work during a push, this is again is mere assertion without quantification or support in the record.

are working on the network between the tap and the head end.³⁴ The critical differences in skill and function are at two points: the equipment encountered and customer contact.

Regarding equipment, the record reveals that Customer Technicians are dealing with the smaller equipment between the tap and the customer's device, including the wiring that constitutes the soft drop, the home amplifier, and the customer's device, either a router, modem or converter box. Network Technicians, in contrast, are dealing with the much larger equipment that constitutes the hard line, including wiring, amplifiers, and nodes that are unlike anything the Customer Technicians encounter. The larger nature of the equipment is reinforced by the respective vehicles used by the Technicians; Customer Technicians almost exclusively use vans, where Network Technicians use trucks with lift capability. While all Technicians need to access utility poles, Customer Technicians can do so with ladders, the heavy equipment used by Network Technicians requires the use of a powered lift. The difference in equipment is further demonstrated by Shelton and Lucke's testimony that they lacked the tools to work on the hard line.

In addressing equipment, the Employer focuses on the similarities in the equipment *used*, essentially tools, as compared to the equipment Technicians work *on*. It is true, as the Employer points out on brief, that both positions use signal meters and "climb poles with the use of ladders in order to inspect network cables." What is critical, however, is not that the equipment used is the same, but that the equipment being worked on is different. Both Customer Technicians and Network Technicians may "climb poles with...ladders to inspect network cables," but Customer Technicians are working on the tap-to-house cables and the Network Technicians are working on the tap-to-head-end cables, and the record demonstrates there are significant differences on both sides of this demarcation.³⁵

The other critical difference between the function of Customer Technician and that of a Network Technician is the amount of customer contact. It is undisputed in the record that customer contact is an element of almost every Customer Technician dispatch, and that the work is performed in or about the residence of the customer and that the Customer Technician's work is, to some degree, evaluated by the Customer on almost every job. While the Customer Technician arrives on-site to interact with the customer and perform work in and about the customer's home, the Network Technician has limited to no customer contact. Even viewing the disputed evidence in a light most favorable to the Employer, Network Technician customer contact is an irregular and infrequent event.

The different skills and functions of the Technicians is also reflected in the performance metrics that form the basis for employees' yearly evaluations. These include factors for

³⁴ The Employer argues repeatedly on brief that Network Technicians perform work in the home. This is unsupported in the record beyond assertion. As noted previously, the Employer clearly uses a computerized dispatch system for at least some of the Network Technicians' dispatches, yet no evidence was introduced regarding the regularity or frequency of Network Technicians' being dispatched to a home. This is an evidentiary problem, and in light of the Employer's burden, I am not inclined to merely accept unsupported assertion when in conflict with other testimony in the record.

³⁵ This distinction is also important in regard to the Tech Support 4 position. The record indicates Simmons repairs equipment used by Technicians, but his contact with the Technician's tools and equipment is for an entirely separate purpose. Simmons repair of a signal leakage meter and a Technicians use of a signal leakage meter is of minimal probative value in the circumstances of this case, in determining whether a community of interest exists between these positions.

customer service, for example, that are part of the Customer Technicians evaluations that are not applied to the Network Technicians.

Technicians do share some skills and use some of the same equipment. Regarding skills, the nature of the Technician career progression is such that a Network Technician possesses the skills and knowledge of a Customer Technician level 1-3, gained as they progress through these levels. However, the evidence establishes the knowledge a Network Technician gained while a Customer Technician is not the knowledge Network Technicians utilize in the normal course of their employment.³⁶ Customer Technicians between levels 1 and 3 install and repair equipment between the tap and the customer's device. The record instead indicates that Network Technicians' work is almost entirely based on the specialized skills relating to the hard line, the area between the tap and the head end. The record contains only the one rare instance, referenced by Shelton and Lucke, where Network Technicians were dispatched to perform work commensurate with their Customer Technician skills.

In regard to the Rep 3 and Tech Support 4 positions, there is limited evidence of similar skills and functions and, in regard to the Warehouse employees there is little or no evidence. It does appear Hara and Simmons have some technical skills. Hara additionally does perform some of his work in the field, similar to the Technicians. However, the record is clear that the Rep 3 and Tech Support 4's primary duties, respectively utility pole lease management and equipment repair, are distinct from the work of the Technicians. It also does not appear either position has any customer contact of any significance. In regard to the Warehouse employees, there is not even an assertion they possess the technical skills of the Technicians, or at any time perform a function similar to that of a Technician. Further, they have no customer contact.

On balance, in light of the equipment and customer contact considerations described above, I find the degree of skill and common functions factor weighs in favor of Petitioner's position.

4. Commonality of Wages, Hours, and other Working Conditions

Customer Technicians are compensated between levels 1 and 4 on the Technician pay scale, while Network Technicians are compensated at level 4 and 5. As a group then, Network Technicians are more highly compensated than Customer Technicians.³⁷ It does appear that the Rep 3 and Tech Support 4 positions are paid a wage comparable to that of a Customer Technician. The Warehouse employees' wages are not contained in the record.

In regard to hours, some overlap occurs, one of the shifts available to the Network Technicians is the same 4 day, 10-hour shift worked by Customer Technicians. Differences exist as well, however, as at least two other shifts, a 5 day, 8-hour shift and the 3:00 a.m. shift, the details of which are not contained in the record, are available to the Network Technicians.

³⁶ Compare *Harrah's Illinois Corp.*, 319 NLRB at 749, cited by the Employer on brief, where a separate unit of skilled maintenance employees was found inappropriate, in part because the skilled maintenance employees spent "all or most of their time performing jobs that do not utilize their skills on the job." The skilled maintenance employees performed landscaping and other tasks performed by the unskilled cleaning employees that composed the remainder of the maintenance department.

³⁷ The Employer argues Technicians are paid the same on standby shifts. Again, the record would seem to suggest they receive the same shift premium, not the same pay.

The other classifications at issue do not work the same shifts as Customer Technicians, instead working a 5 day, 8-hour shift.

Some working conditions are the same or similar for Technicians; as both participate in home dispatching and home garage programs. Some working conditions are the same for all employees at issue, they wear the same uniforms and receive the same clothing stipend. All employees at the Employer's facility, including all the classifications that are and are not at issue, are subject to the same Employer policies and benefits, including medical, dental, vision, disability, 401(k), discount, vacation, and an overall performance bonus program.

I find this factor to be a neutral consideration. While there are differences between the classifications at issue in significant terms and conditions of employment such as wages and hours, there are also similarities in important considerations such as employment policies and benefits.

5. Shared Supervision

The Employer's organization of its supervisory hierarchy also supports the unit sought by Petitioner, as Customer Technicians and Network Technicians do not share common supervision. Teams of Customer Technicians report to their respective front-line supervisors, who, in turn, report to Installation and Service Manager Todd Clark. Network Technicians report to Thomas, and then to Vavrousek. Accordingly, it is not until the third-level, Votaw as Director of Technical Operations, the most senior manager at the Employer's facility, that the Technicians have shared supervision. Clearly, some supervisory overlap may occur on standby shifts, but it is not quantified on the record and, to the extent it can be deduced, it is limited in negating the separate supervision that generally prevails.

In regard to the Rep 3 and Tech Support 4 classifications, they share the same supervisors as the Network Technicians and the analysis is the same. In regard to the Warehouse employees, however, the lack of shared supervision is even stronger evidence in Petitioner's favor. While the warehouse employees have a front-line supervisor at the Seattle facility, that supervisor does not report to Votaw, but reports to other supervisors and managers at a different facility.

I find the two levels of supervisory separation in the instant case weighs strongly in favor of the Petitioner.

6. Bargaining History

While there is some evidence of a bargaining history, it is not of assistance in making a community of interest determination. First, at least 10 years have passed since decertification in the previous unit. Second, the information in the hearing record and in the records of the Regional Office, is incomplete regarding the previous bargaining unit. Third, two Employers separate the bargaining unit from the present case, and it appears the nature of the work has shifted significantly, from only cable television to a multi-service provider. Indeed, the Employer concedes that the industry has changed significantly in regards to services, technology and equipment in the intervening period. Fourth, the previous bargaining unit is clearly not a perfect parallel, while apparently combining field employees like the Customer Technicians and Network Technicians, it also was a multi-facility unit. Fifth, a different union represented the previous unit.

Finally, I note that even if a direct parallel could be drawn, this would only demonstrate another appropriate unit existed in the past. Bargaining history is a factor to consider, but only because the Board does not seek to disrupt established bargaining relationships. That is clearly not the case here. The issue here is whether the petitioned-for unit is *an* appropriate unit.

I find the evidence of a bargaining history is insufficient to support the Employer's position that Petitioner's unit is inappropriate.

B. Conclusion

I find the petitioned-for Unit of Customer Technicians, under a traditional community of interest analysis, constitutes a clearly identifiable, functionally distinct group and, therefore, *an* appropriate unit.³⁸ See *Ore-Ida Foods*, 313 NLRB 1016. In reaching this conclusion, I rely on the minimal functional integration between the Customer Technicians and the other classifications raised by the Employer, the lack of significant contact and interchange between the Customer Technicians and the other classifications, the difference in skills and functions, and the separate supervision of the Customer Technicians.³⁹

IV. CONCLUSION

Based on the foregoing, the entire record, and having carefully considered the parties' briefs, I conclude that the petitioned-for Unit is appropriate.

Accordingly, I shall direct an election in the following appropriate Unit:

All full-time and regular part-time Customer Communication Technicians working out of the Employer's Seattle, Washington Technical Operations Center; excluding all other employees, Network Communication Technicians, Representative 3/Field Operations employees, Technical Support 4 employees, Warehouse employees, Dispatchers, Customer Sales and Service Representatives, Sales Representatives, Quality Control employees, office clericals, guards and supervisors as defined in the Act.

There are approximately 99 employees in the Unit found appropriate.

V. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the Unit at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the Unit who were employed during the payroll period ending immediately preceding the date of

³⁸ The Employer argues on brief that a unit of "field employees" employed by a cable company has been found appropriate by the Board, citing to *Carson Cable TV*, 275 NLRB No. 201 (unpublished), 795 F.2d 879 (9th Cir. 1986). This is true, but it only establishes that there is another potentially appropriate unit and not that Petitioner's proposed unit is inappropriate.

³⁹ The Employer makes several arguments on brief regarding residual units, in particular in reference to the Warehouse employees. Inasmuch as I am not including some of the classifications raised by the Employer, these cases are inapplicable and the arguments moot. Further, even if the Warehouse employees were the only remaining employees, a unit of Warehouse employees alone could arguably constitute an appropriate unit.

this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by International Brotherhood of Electrical Workers Local 89, AFL-CIO.

A. List of Voters

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in Region 19 of the National Labor Relations Board, 915 Second Avenue, Suite 2948, Seattle, Washington 98174 on or before **November 4, 2010**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (206) 220-6305. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

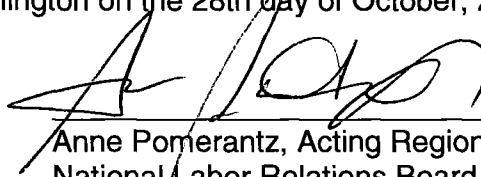
B. Notice Posting Obligations

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

C. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street NW, Washington, DC 20570. This request must be received by the Board in Washington by **November 12, 2010**. The request may be filed through E-Gov on the Board's web site, <http://www.nlr.gov>, but may not be filed by facsimile.⁴⁰

DATED at Seattle, Washington on the 28th day of October, 2010.



Anne Pomerantz, Acting Regional Director
National Labor Relations Board, Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98174

⁴⁰ To file a request for review electronically, go to <http://www.nlr.gov> and select the E-Gov tab. Then click on the E-filing link on the menu. When the E-file page opens, go to the heading Board/Office of the Executive Secretary, and click the "File Documents" button under that heading. A page then appears describing the E-filing terms. At the bottom of the page, check the box next to the statement indicating that the user has read and accepts the E-File terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the "Submit Form" button. Guidance for E-Filing is contained in the attachment supplied with the Regional office's original correspondence in this matter and is also located under "E-Gov" on the Board's website, <http://www.nlr.gov>.